

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1972

US EPA RECORDS CENTER REGION 5



ENVIRONMENTAL PROTECTION AGENCY)

v.)

#72-186

MAL LANDFILL CORPORATION)

Thomas J. Immel, Assistant Attorney General, for Environmental Protection Agency

Hillary H. Hallett, for MAL Landfill Corporation

Dick H. Mudge, Jr., for Chouteau Island Citizens Association and Coalition for the Environment, St. Louis Region

Opinion and Order of the Board (by Mr. Lawton):

By complaint filed on May 1, 1972 (as amended on August 11, 1972), the Environmental Protection Agency ("Agency") charged MAL Landfill Corporation ("MAL"), owner and operator of a Madison County refuse disposal site, with numerous violations of the Environmental Protection Act ("Act"), Ill. Rev. Stat., 1971, ch. 111 1/2, and the Rules and Regulations For Refuse Disposal Sites and Facilities ("Rules") on many separate dates. In total, MAL was charged with nearly one-hundred violations, including the open dumping of garbage and refuse, the deposition of contaminants on land causing a water pollution hazard, failure to confine dumping to the smallest practicable area, allowing blowing litter, failure to provide daily cover, operating the site without a permit and depositing liquids and hazardous materials on the site without a permit, improperly conducting salvaging operations and inadequately providing vector control, and depositing refuse in standing water.

By Stipulation submitted to the Board on October 26, 1972, more than one-half the allegations were dropped and the parties agreed that if the Agency's witnesses were to testify, they would state that they had observed certain conditions on certain dates, including at least 12 separate instances of blowing litter, at least 14 separate instances of failure to provide daily cover, and several other infractions relating to vector control and the deposition of liquids and hazardous materials on the site. The Stipulation also vitiated the need for oral testimony on the numerous photographs taken by Agency personnel to substantiate their charges, and constituted the Agency's entire case. Since there was no oral testimony offered by complainant, there was also no

cross-examination; and while Respondent did not specifically admit any of the charges, it did generally admit that such violations had occurred, stressing, however, that the violations were of a "housekeeping" nature (R. 52, 130-145, 218-219, 332, 337).

Evidence and the Supplemental Statement submitted by the Agency indicated that MAL's operation is one of the largest of its kind in the State of Illinois. The present owners apparently acquired the 75-acre site in 1969 (R. 173), and presently operate seven days per week and twenty-four hours per day, handling an estimated 1,000,000 cubic yards of garbage each year (R. 47). The area they service includes the Cities of Venice, Madison, Glen Carbon and Granite City; area park, school and township highway districts; the western portion of Madison County; and Southern Illinois University at Edwardsville (R. 37). They employ fifteen major pieces of machinery and equipment in their operations, which they maintain is the most used at any site in the State (R. 50), and they receive some 400 truckloads of materials each day.

MAL appears to have received a permit to operate the old site on September 18, 1972 and is in the process of expanding onto an adjacent 246-acre site. As the Agency points out in its Supplemental Statement, the permit is conditioned upon the posting of a \$250,000 performance bond to guarantee compliance in the future with the terms of the permit. In addition, the Agency agrees that the remaining violations alleged constitute "housekeeping" violations; that the operators have sufficient equipment and adequate cover material to properly operate the site if utilized correctly; and that the operators of the fill have corrected the violations found by the Agency's inspectors upon being advised of the inspector's conclusions.

The record indicates that this is a massive operation, basically well-run, but responsible for certain infractions of the Act and Rules of a housekeeping nature, either due to the very size of the operation itself, or to occasional sloppiness in its conduct. MAL's own witness frequently stated that the problems referred to in the complaint "should be kept on top of," (R. 130, 132-145), but a Madison County Sanitation Pollution Official testified that every time the operators had been informed of a possible offense, they had corrected the situation by the next day (R. 191).

The case generated a considerable amount of local interest, and several citizens testified at the hearing. There was testimony offered indicating that the blowing litter problem is a great deal more severe than the parties said it was (R. 222, 235-237, 265); that the area is a

natural flood-plain, with a sandy subsoil, and that the continuous rise and fall of the water table threatens to draw contamination from the fill back into the soil endangering the local water supply (R. 229-230, 235-236, 264, 320-323). As the Agency correctly pointed out, the substance of the citizen testimony pertained to whether or not the permit should have been issued in the first place, and not to the individual violations enumerated in the complaint which allegedly occurred at the site (R. 249). The limited intervention of the Chouteau Island Citizens Association and the Coalition for the Environment raised similar questions.

We are here concerned with certain very specific allegations of violations at the site, and not with the question of whether from a land-use planning, or any other point of view, the site would be better situated elsewhere. It would appear that the primary concern of the Intervenor relates to the new, larger site which they fear might have a significant detrimental effect on the Island's ecology, and not to the principal issues raised in the complaint. We are unclear as to whether all appropriate permits for the operation of the new site have been issued. If so, the Intervenor and any other concerned individual or group are free to file a new proceeding against MAL, if there is evidence of pollution violations at the new site, or that reasons exist calling for a revocation of the permit. Similarly, the Intervenor is free to prosecute a new case against MAL for other violations at the old site not considered in this proceeding. The burden of proof which must be borne in such a case is the same burden which must be borne in all enforcement actions: specific charges must be filed, supported by convincing evidence at a public hearing. Vague misgivings about the propriety of the facility near a residential area will not suffice.

In summary, we find that the undisputed evidence indicates several housekeeping violations of the Act and Rules at the site. We will order Respondents to pay a nominal penalty to the State of Illinois for such violations, and remind them that we may not be so lenient if such violations persist in the future. All reasonable and practicable steps must be taken to ensure that such violations do not recur, and since the existence of the violations may have an effect on the public's health and welfare, an even greater effort must be made by the operators of the site to see that they are corrected.

This opinion constitutes the Board's findings of fact and conclusions of law.

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IT IS THE ORDER of the Pollution Control Board:

1. Respondent shall pay to the State of Illinois within thirty-five (35) days from the receipt of this Order, the sum of \$1,000 as a penalty for the violations found in this proceeding as set forth in the stipulation. Payment shall be made by certified check or money order payable to the State of Illinois, and shall be sent to Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.
2. Respondent shall not conduct any refuse disposal or landfill operations until appropriate permits therefor have first been obtained from the Agency; and shall take all necessary steps to correct the violations found to have occurred herein, and to assure that they will not recur in the future: specifically, Respondent shall immediately cease and desist the improper operation of the site and shall immediately take steps to assure daily cover, the prevention of blowing litter, and vector control; shall not deposit liquids or hazardous materials at its landfill sites without first having obtained a permit from the Agency to do so; and shall forthwith cease improper salvaging operations at the sites.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above Opinion and Order this 5th day of February, 1972, by a vote of 7 to 0.

Christan Moffett

PROOF OF SERVICE

I, SALLY SHORE, having been sworn and under oath do state that I have this 21st day of February, 1978 served a copy of the foregoing Notice, Motion for Leave to File Amended Complaint and an Amended Complaint upon the persons to whom said Notice is directed by placing a copy of same in envelopes addressed to said persons and depositing same with the United States Postal Service located at 160 North LaSalle Street, Chicago, Illinois 60601.

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 21st DAY
OF FEBRUARY, 1978.

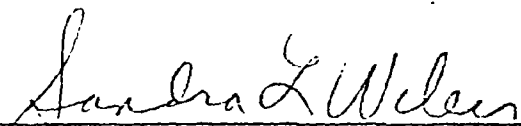
NOTARY PUBLIC

CERTIFICATION

I, CHRISTAN L. MOFFETT, Clerk of the Illinois Pollution Control Board, do hereby certify that the attached is a true and correct copy of the Opinion and Order adopted by the Board on December 5, 1972 in the matter of PCB 72-186, Environmental Protection Agency v. Mal Landfill Corporation.


CHRISTAN L. MOFFETT
Illinois Pollution Control Board

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 29th DAY
OF December, 1977.


Notary Public